



amend his original 12.2 Notice to include the kind of experts who performed the neurological examinations of O'Reilly.

On May 20, 2010, O'Reilly filed a "Belated Compliance with the Court's Order of May 10, 2010":

Counsel for the defendant became engaged in trial preparation matters, such as reviewing belatedly provided new discovery, interviewing witnesses, reviewing jury questionnaires and frankly, through excusable neglect did not comply with this directive.

The defendant will call a neurologist who reviewed EEG charts of Mr. O'Reilly.

Before the Court is the Government's "Motion to Strike Defendant's 12.2 Notice and Defendant's Supplemental 12.2 Notice." (Doc. #507). The Government asks the Court to exclude O'Reilly's expert mental health evidence from the penalty phase.

The Government's motion is **DENIED**. O'Reilly's Supplemental 12.2 Notice was timely, O'Reilly sought the Court's permission to file his Supplemental 12.2 Notice, and O'Reilly had a legitimate reason for his belated compliance with the Court's Order

**IT IS ORDERED.**

S/Victoria A. Roberts  
Victoria A. Roberts  
United States District Judge

Dated: June 3, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on June 3, 2010.

s/Carol A. Pinegar  
Deputy Clerk